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Superior Court of California,
County of San Diego
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By Jessica Pascual, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DIVISION

MELISSA ESCALERA, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

SHARP HEALTHCARE, a California
Corporation, SHARP GROSSMONT
HOSPITAL, and DOES 1- 100, inclusive,
Defendants.

CASE NO.: 37-2016-00017392-CU-PO-CTL

[E-FILE]

CLASS ACTION

COMPLAINT

- 1) Breach of Fiduciary Duty;
- 2) Breach of Confidentiality (Evid. Code § 994);
- 3) Unlawful Recording of Confidential Information
(Pen. Code §§ 632, 637.2);
- 4) Negligent Creation of Medical Information
(Civ. Code § 56.101);
- 5) Negligent Maintenance of Medical Information
(Civ. Code § 56.101);
- 6) Unlawful Disclosure of Medical Information
(Civ. Code §§ 56 *et seq.*);
- 7) Invasion of Privacy – Intrusion Into Private
Affairs;
- 8) Invasion of Privacy (Cal. Const., Art. 1, § 1);
- 9) Distribution of Private Sexually Explicit
Materials (Civ. Code § 1708.85)

[DEMAND FOR JURY TRIAL]

Plaintiff Melissa Escalera, on behalf of herself and all others similarly situated, alleges as follows:

INTRODUCTION

1. The birth of a child. The loss of a pregnancy. Surgery to remove cancer. These are some of life's most emotional and private moments. This case is about a hospital's perverse decision to spy on its patients during these moments, and record them without their knowledge or consent, for its own self-interest.

2. For a year, Defendants set up hidden cameras in all three operating rooms at the Women's Center at Sharp Grossmont Hospital. Triggered by motion-detecting sensors, these cameras began recording events in these operating rooms whenever any person entered the room. These videos captured images of caesarean births, birth complications, dilatation and curettage to resolve miscarriages, hysterectomies, and sterilization procedures. Patients were undressed, exposed, and at their most vulnerable during these procedures.

3. Defendants recorded approximately 15,000 videos of patients in their operating rooms -- all in an alleged effort to catch an employee in the act of taking a drug from the operating room cart and putting it in his pocket. Defendants retain at least 6,966 videos, after allegedly destroying some of them. In their overzealous pursuit of evidence against this employee, Defendants breached the privacy rights of thousands of patients when they were at their most vulnerable.

4. Defendants further breached patient privacy by allowing non-medical personnel, such as security guards and attorneys, to view these private videos.

5. This case is a class action under Code of Civil Procedure section 382, seeking recovery for Defendants' systematic and shocking breach of their patients' privacy. Plaintiffs seek monetary damages and penalties as a result of Defendants' unlawful conduct. Damages and penalties are necessary both to compensate Plaintiffs, and to deter Defendants from further breaches.

JURISDICTION AND VENUE

6. The Superior Court of California for the County of San Diego has jurisdiction over this matter because the allegations and claims herein arise under California common and statutory law.

7. Venue is proper in this Court pursuant to Code of Civil Procedure section 395(a). Defendant regularly conducts business throughout California, including San Diego County, and a substantial portion of the harm caused by Defendant to Plaintiffs and numerous other putative class

1 members took place in San Diego County.

2 **THE PARTIES**

3 8. Plaintiff Escalera resides in San Diego County, California.

4 9. More than two-thirds of the members of the proposed class are citizens of California.

5 10. Defendant Sharp HealthCare is a corporation organized under the laws of California and
6 maintains its principal place of business at 8695 Spectrum Center Boulevard, San Diego, CA 92123.

7 11. Defendant Sharp Grossmont Hospital is an affiliate of Sharp HealthCare that maintains its
8 principal place of business at 5555 Grossmont Center Drive, La Mesa, CA 91942.

9 12. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under
10 the fictitious names DOES 1-100, but prays for leave to amend and serve such fictitiously named
11 Defendants once their names and capacities become known.

12 13. Plaintiff is informed and believes, and based thereon alleges, that each and all of the acts
13 and omissions alleged herein were performed by, or are attributable to, Defendants and DOES 1-100
14 (collectively "Defendants"), each acting as the agent for the other, with legal authority to act on the
15 other's behalf. The acts of any and all Defendants were in accordance with, and represent the official
16 policies of Defendant Sharp HealthCare.

17 14. Plaintiff is informed and believes, and based thereon alleges that, at all times herein
18 mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein.
19 At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of
20 each and all the other Defendants in proximately causing the damages herein alleged.

21 15. Plaintiff is informed and believes, and based thereon alleges, that each of said Defendants
22 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
23 occurrences, and transactions alleged herein.

24 **GENERAL ALLEGATIONS**

25 **Plaintiff's Emergency C-Section Delivery**

26 16. On September 4, 2012, Plaintiff was admitted to Sharp Grossmont Hospital for the birth
27 of her second child. Her child was born on September 4, 2012, through an emergency caesarean section
28 performed in an operating room at the Women's Center.

1 17. The birth of her child was an extremely emotional experience for Plaintiff. Her child was
2 born under emergency circumstances, after Plaintiff's water broke and the baby presented in a breech
3 position. Plaintiff was transported by ambulance from her doctor's office to Sharp Grossmont Hospital.
4 Plaintiff had a reasonable expectation of privacy during this experience, and that Defendants would
5 respect her privacy.

6 18. Unbeknownst to Plaintiff, Defendants had installed a hidden camera in the operating room
7 with a motion-detector sensor. Plaintiff is informed and believes that Defendants surreptitiously recorded
8 the birth of her child using this hidden camera.

9 19. Plaintiff did not consent at any time to Defendants' recording of this private moment.

10 20. Plaintiff is informed and believes that Defendants' personnel, including security guards
11 and attorneys, reviewed this video after it was recorded.

12 21. Plaintiff first became aware of Defendants' secret recording in May 2016.

13 **Defendants Spied on the Class Members in Their Most Private Moments**

14 22. In July 2012, Defendants installed video cameras on the drug carts in the operating rooms
15 in the Women's Center at Sharp Grossmont Hospital. The video cameras were installed on top of the
16 drug carts and equipped with motion-detecting sensors that triggered them to begin recording whenever
17 anyone entered the room, and continue recording even after motion stopped.

18 23. Defendants claim that this secret video surveillance was necessary as part of their
19 investigation into whether an employee was stealing the anesthesia drug propofol from drug carts in the
20 operating rooms. Despite that claim, Defendants' cameras were set up to record when any person entered
21 an operating room, to record a wide range of activity in the operating room beyond access to the drug
22 cart, and to continue recording even after motion stopped.

23 24. Defendants recorded approximately 15,000 video clips in the operating rooms between
24 July 2012 and June 2013. These video clips show Defendants' female patients unconscious, undressed on
25 operating room tables, and undergoing medical procedures. Because of the nature of these procedures,
26 the videos captured women while they were emotionally and physically exposed, often naked with their
27 most sensitive genital areas visible.

1 25. These videos contain matters of great sensitivity, going to the core of patients' privacy
2 rights. Defendants recorded these videos in an area of Sharp Grossmont Hospital that is not open to the
3 public. Entry into the operating room is limited to Defendants' employees who need to be there to
4 perform medical procedures, patients, and at times a few family members of patients.

5 26. After the videos were recorded, they were reviewed by non-medical personnel of
6 Defendants, including security guards and attorneys, as part of the internal investigation.

7 27. The patients did not consent to being recorded by Defendants during their medical
8 procedures.

9 **Defendants' Policies Recognize the Privacy Rights That They Breached**

10 28. Defendants have several policies that recognize and obligate them to respect the privacy
11 of their patients. Defendants' violations of their own policies underscore the shocking and serious nature
12 of their breach of patients' privacy.

13 29. Defendants' Code of Conduct contains a "Standard of Behavior" for confidentiality that
14 states that "Sharp HealthCare protects customers' confidentiality, privacy and modesty in all situations.
15 We are sensitive to the personal nature of health care, and we do everything we can to earn the trust that
16 others place in us."

17 30. According to Defendants' list of "Patient Rights," their patients have a right to "[f]ull
18 consideration of privacy concerning their medical care program. Case discussion, examination, and
19 treatment are confidential and should be conducted discreetly. [Patients] have to right to be advised as to
20 the reason for the presence of any individual."

21 31. According to Defendants' list of "Patient Rights," their patients have a right to "[h]ave
22 [their] personal privacy respected."

23 32. According to Defendants' list of "Patient Rights," their patients have a right to
24 "[c]onfidential treatment of all communications and records pertaining to [their] care and stay in the
25 hospital." Defendants promise their patients that "[w]ritten permission shall be obtained before medical
26 records are made available to anyone not directly concerned with your care."

27 33. Defendants violated these rights by failing to disclose to their patients that a hidden
28 camera was installed in the operating room recording their procedures, essentially inviting an unlimited

1 number of individuals to view the private circumstances of patients' medical treatment. Defendants
2 violated these rights further by allowing non-medical personnel, including security guards and attorneys,
3 to view the surreptitiously recorded videos.

4 **CLASS ALLEGATIONS**

5 34. Plaintiff brings this action on behalf of herself, and on behalf of all other persons similarly
6 situated, and thus seeks certification under section 382 of the California Code of Civil Procedure

7 35. The proposed class in this action consists of and is defined as:

8 All persons who underwent a medical procedure in an operating room at
9 the Women's Center at Sharp Grossmont Hospital between July 17, 2012,
and June 30, 2013.

10 36. There is a well-defined community of interest in the litigation and the Class is easily
11 ascertainable:

- 12 a. Numerosity: The members of the Class are so numerous that joinder of all members
13 would be unfeasible and impractical. The membership of the entire Class is unknown
14 to Plaintiffs at this time, however, the Class is estimated to be greater than one
15 thousand (1,000) individuals and the identity of such membership is readily
16 ascertainable by inspection of Defendants' patient records.
- 17 b. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests
18 of each Class Member with whom she has a well-defined community of interest, and
19 Plaintiff's claims are typical of all Class Members' claims as demonstrated herein.
- 20 c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately, protect the interests
21 of each Class Member with whom she has a well-defined community of interest and
22 typicality of claims, as alleged herein. Plaintiff acknowledges that she has an
23 obligation to make known to the Court any relationship, conflicts, or differences with
24 any Class Member. Plaintiff's attorneys and class counsel are versed in the rules
25 governing class action discovery, certification, and settlement. Plaintiff has incurred,
26 and throughout the duration of this action will continue to incur, costs and attorneys'
27 fees that have been, are, and will be necessarily expended for the prosecution of this
28 action for the substantial benefit of each Class Member.

- 1 d. Superiority: The nature of Plaintiff's claims makes the class action procedure superior
2 to other methods. A class action will achieve economies of time, effort and expense as
3 compared with separate lawsuits, and will avoid inconsistent outcomes because the
4 same issues can be adjudicated in the same manner and at the same time for the entire
5 class.
- 6 e. Public Policy Considerations: California health care providers have strict obligations
7 with respect to the privacy of their patients. This action seeks to redress Defendants'
8 breach of patient privacy. A class action here serves the important public policy
9 consideration of allowing patients a type of anonymity that allows for the vindication
10 of their rights while still protecting their privacy.

11 37. There are common questions of law and fact as to the Class that predominate over
12 questions affecting only individual members, including, but not limited to:

- 13 a. Whether Defendants' recording of patients through a hidden camera violated their
14 right to privacy;
- 15 b. Whether Defendants' viewing of these recording violated the patients' right to
16 privacy;
- 17 c. Whether Defendants' obtained the written consent of any patient to this secret
18 recording through its admission or other forms;
- 19 d. Whether Defendants' breached their Code of Conduct regarding Standards of
20 Behavior regarding confidentiality of patients;
- 21 e. Whether Defendants' breached their list of Patient Rights;
- 22 f. The appropriate amount of damages, restitution, and/or monetary penalties resulting
23 from Defendant's conduct.

24 **FIRST CAUSE OF ACTION**

25 **Breach of Fiduciary Duty**

26 **Against All Defendants and on Behalf of Plaintiffs and the Class Members**

27 38. Plaintiff and the Class Members incorporate by reference and re-allege as if fully stated
28 herein the material allegations set out in the preceding paragraphs.

1 39. Defendants owed a fiduciary duty to act with the utmost good faith in the best interests of
2 Plaintiff and the Class members, and to act with reasonable care.

3 40. Plaintiff and the Class members placed trust and confidence in Defendants.

4 41. Defendants acted on behalf of Plaintiff and the Class members in providing them with
5 medical treatment.

6 42. Defendants failed to act as reasonably careful medical professionals would have acted
7 under the same or similar circumstances, thereby breaching their fiduciary duties to Plaintiff and the
8 Class members.

9 43. Plaintiff and the Class Members suffered harm, including but not limited to, suffering,
10 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame,
11 mortification, hurt feelings, disappointment, depression and feelings of powerlessness.

12 44. Defendants' conduct was a substantial factor in causing Plaintiff and the Class Members'
13 harm.

14 45. Defendants' conduct as alleged above was despicable; it was conduct so vile, base, or
15 contemptible that it would be looked down on and despised by reasonable people.

16 46. Defendants engaged in the conduct alleged above with malice, oppression, or fraud in that
17 Defendants' conduct was done with a willful and knowing disregard of Plaintiff and the Class Members'
18 rights, Defendants' conduct subjected Plaintiff and the Class Members' to cruel and unjust hardship in
19 knowing disregard of their rights, or Defendants intentionally concealed a material fact (the secret
20 recording devices) and did so intending to harm Plaintiff and the Class Members or in reckless disregard
21 that such harm would result.

22 47. As a result, in addition to other remedies available, Plaintiff and the Class Members may
23 also recover damages to punish Defendants and deter future similar wrongful conduct.

24 48. Plaintiff and the Class Members are informed and believe that Defendants' conduct is
25 ongoing and will cause irreparable harm if an injunction does not issue, and therefore seek injunctive
26 relief.

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1 knowing disregard of their rights, or Defendants intentionally concealed a material fact (the secret
2 recording devices) and did so intending to harm Plaintiff and the Class Members or in reckless disregard
3 that such harm would result.

4 59. As a result, in addition to other remedies available, Plaintiff and the Class Members may
5 also recover damages to punish Defendants and deter future similar wrongful conduct.

6 60. Plaintiff and the Class Members are informed and believe that Defendants' conduct is
7 ongoing and will cause irreparable harm if an injunction does not issue, and therefore seek injunctive
8 relief.

9 **THIRD CAUSE OF ACTION**

10 **Unlawful Recording of Confidential Information – Penal Code sections 632 & 637.2**

11 **Against All Defendants and on Behalf of Plaintiff and the Class Members**

12 61. Plaintiff and the Class Members incorporate by reference and re-allege as if fully stated
13 herein the material allegations set out in the preceding paragraphs.

14 62. Defendants intentionally video recorded and/or eavesdropped on Plaintiff and the Class
15 Members' confidential communications and medical procedures in the operating rooms of SGH's
16 Women Center by using an electronic device (hidden video cameras).

17 63. Plaintiff and the Class Members had a reasonable expectation that their medical
18 procedures were not being video recorded.

19 64. Plaintiff and the Class Members had a reasonable expectation that their communications
20 with medical personnel and their medical procedures were not being viewed by Sharp security personnel
21 or by anyone not physically present in the operating room at the time of these procedures.

22 65. Defendants, by acting as herein alleged, unlawfully recorded confidential information of
23 Plaintiff and the Class Members and violated Plaintiff and the Class Members' privacy rights in violation
24 of California Penal Code §§632 & 637.2.

25 66. Defendants did not have the consent of all parties to said conversations and
26 communications to record them.

67. Plaintiff and the Class Members suffered harm, including, but not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame, mortification, hurt feelings, disappointment, depression and feelings of powerlessness. Plaintiff and the Class Members are entitled to treble damages for such harm.

68. Defendants' conduct was a substantial factor in causing Plaintiff and the Class Members' harm.

69. As a result, and in addition to other available remedies at law, pursuant to Penal Code section 637.2, Plaintiff and the Class Members are entitled to recover a sum equal to the greater of treble their actual damages or statutory penalties of five thousand dollars (\$5,000) per class member per violation.

70. Plaintiff and the Class Members, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, also bring an action to enjoin and restrain the Defendants from any violation of this chapter by continuing to secretly video record medical procedures without the consent of all parties.

FOURTH CAUSE OF ACTION

Negligent Creation of Medical Information

(Civil Code Section 56.101)

Against All Defendants and on Behalf of Plaintiff and the Class Members

71. Plaintiff and the Class Members incorporate by reference and re-allege as if fully stated herein the material allegations set out in the preceding paragraphs.

72. Under the California Confidentiality of Medical Information Act, including, without limitation, Civil Code Section 56.101, Defendants owed Plaintiff and the Class Members a duty to act with reasonable care.

73. Defendants, by secretly recording Plaintiff and the Class Members and by acting as alleged above, negligently created medical information in violation of the California Confidentiality of Medical Information Act, Civil Code Section 56.101.

74. Plaintiff and the Class Members suffered harm, including, but not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame,

1 mortification, hurt feelings, disappointment, depression and feelings of powerlessness.

2 75. Defendants' conduct was a substantial factor in causing Plaintiff and the Class Members'
3 harm.

4 76. As a result, and in addition to any other remedies available at law, pursuant to Civil Code
5 section 56.36, Plaintiff and the Class Members are entitled to actual damages and nominal statutory
6 damages in the amount of one thousand dollars (\$1,000) per class member per violation.

7 77. Plaintiff and the Class Members are informed and believe that Defendants' conduct is
8 ongoing and will cause irreparable harm if an injunction does not issue, and therefore seek injunctive
9 relief.

10 **FIFTH CAUSE OF ACTION**

11 **Negligent Maintenance of Medical Information**

12 **(Civil Code Section 56.101)**

13 **Against All Defendants and on Behalf of Plaintiff and the Class Members**

14 78. Plaintiff and the Class Members incorporate by reference and re-allege as if fully stated
15 herein the material allegations set out in the preceding paragraphs.

16 79. Under the California Confidentiality of Medical Information Act, including, without
17 limitation, Civil Code Section 56.101, Defendants owed Plaintiff and the Class Members a duty to act
18 with reasonable care.

19 80. Defendants breached their duties and violated the California Confidentiality of Medical
20 Information Act, Civil Code Section 56.101, by allowing their security personnel to view the recordings
21 of Plaintiff and the Class Members and by negligently creating, maintaining, preserving and storing
22 Plaintiff and the Class Members' medical information in a manner that failed to preserve the
23 confidentiality of that information.

24 81. Defendants further breached their duties and again violated the California Confidentiality
25 of Medical Information Act, Civil Code Section 56.10, by disclosing the surreptitious recordings of
26 Plaintiff and the Class Members to third parties during an internal investigation and by acting as alleged
27 above.
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1 Civil Code Section 56.101, by allowing their security personnel to view the secret recordings of Plaintiff
2 and the Class Members.

3 91. Defendants again breached their duties and unlawfully disclosed Plaintiff and the Class
4 Members' medical information in violation of the California Confidentiality of Medical Information Act,
5 Civil Code Section 56.10, by disclosing the surreptitious recordings of Plaintiff and the Class Members
6 to third parties during an internal investigation and by acting as alleged above.

7 92. Defendants failed to obtain a valid authorization to disclose Plaintiff and the Class
8 Members' medical information. Instead, Defendants' conduct was, at all relevant times, without Plaintiff
9 and the Class Members' knowledge, authorization or informed consent or Plaintiff and the Class
10 Members were under duress.

11 93. Defendants' wrongful conduct caused Plaintiff and the Class Members to sustain personal
12 injury in the form of suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock,
13 humiliation, embarrassment, shame, mortification, hurt feelings, disappointment, depression and feelings
14 of powerlessness.

15 94. As a result, and in addition to any other remedies available at law, pursuant to Civil Code
16 section 56.35, Plaintiffs are entitled to recover compensatory damages, punitive damages not to exceed
17 three thousand dollars (\$3,000) per class member per violation, attorneys' fees not to exceed one
18 thousand dollars (\$1,000) per class member per violation, and the costs of litigation.

19 95. As a result, and in addition to any other remedies available at law, pursuant to Civil Code
20 section 56.36, Plaintiffs are entitled to actual damages and nominal statutory damages in the amount of
21 one thousand dollars (\$1,000) per class member per violation.

22 96. Plaintiff and the Class Members are informed and believe that Defendants' conduct is
23 ongoing and will cause irreparable harm if an injunction does not issue, and therefore seek injunctive
24 relief.

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1 **SEVENTH CAUSE OF ACTION**

2 **Invasion of Privacy – Intrusion Into Private Affairs**

3 **Against All Defendants and on Behalf of Plaintiff and the Class Members**

4 97. Plaintiff and the Class Members incorporate by reference and re-allege as if fully stated
5 herein the material allegations set out in the preceding paragraphs.

6 98. Plaintiff and the Class Members had a reasonable expectation of privacy in the operating
7 rooms of SGH's Women Center.

8 99. Plaintiff and the Class Members also had a reasonable expectation of privacy that their
9 communications with medical personnel and their medical procedures were not being video recorded.

10 100. Plaintiff and the Class Members further had a reasonable expectation that their
11 communications with medical personnel and their medical procedures were not being recorded by Sharp
12 security personnel or by anyone not physically present in the operating room at the time of said
13 communications and procedures.

14 101. Defendants intentionally intruded on Plaintiff and the Class Members' privacy by
15 installing recording devices in the operating rooms.

16 102. Defendants also intentionally intruded on Plaintiff and the Class Members' privacy by
17 recording Plaintiff and the Class Members' confidential communications and medical procedures in the
18 operating rooms of Sharp Grossmont Hospital's Women's Center.

19 103. Defendants additionally intentionally intruded on Plaintiff and the Class Members'
20 privacy by allowing third parties, including Defendants' security personnel and attorneys, to view the
21 recordings of Plaintiff and the Class Members.

22 104. Defendants further intentionally intruded on Plaintiff and the Class Members' privacy by
23 disclosing certain recordings of Plaintiff and the Class Members to third parties during the course of an
24 internal investigation.

25 105. In acting as alleged above, Defendants' violated Plaintiff and the Class Members' privacy
26 rights at a time when Plaintiff and the Class Members' were at their most vulnerable.

27 106. In acting as alleged above, Defendants' conduct was outrageous and motivated by a
28 commercial interest in disregard of Plaintiff and the Class Members' privacy rights.

107. Defendants' intrusion into Plaintiff and the Class Members' privacy would be highly offensive to a reasonable person.

108. Plaintiff and the Class Members suffered harm, including, but not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame, mortification, hurt feelings, disappointment, depression and feelings of powerlessness.

109. Defendants' conduct was a substantial factor in causing Plaintiff and the Class Members' harm.

110. Plaintiff and the Class Members are informed and believe that Defendants' conduct is ongoing and will cause irreparable harm if an injunction does not issue, and therefore seek injunctive relief.

EIGHTH CAUSE OF ACTION

Invasion of Privacy – California Constitution, Art. 1, section 1

Against All Defendants and on Behalf of Plaintiff and the Class Members

111. Plaintiff and the Class Members incorporate by reference and re-allege as if fully stated herein the material allegations set out in the preceding paragraphs.

112. Plaintiff and the Class Members had a reasonable expectation of privacy in the operating rooms of Sharp Grossmont Hospital's Women's Center.

113. Plaintiff and the Class Members also had a reasonable expectation of privacy that their communications with medical personnel and their medical procedures were not being video recorded.

114. Plaintiff and the Class Members further had a reasonable expectation that their communications with medical personnel and their medical procedures were not being viewed or heard by Sharp security personnel or by anyone not physically present in the operating room at the time of said conversations, communications and procedures.

115. Defendants intentionally intruded on Plaintiff and the Class Members' privacy by installing recording devices in the operating rooms.

116. Defendants also intentionally intruded on Plaintiff and the Class Members' privacy by recording Plaintiff and the Class Members' confidential communications and medical procedures in the operating rooms of Sharp Grossmont Hospital's Women's Center.

1 117. Defendants additionally intentionally intruded on Plaintiff and the Class Members'
2 privacy by allowing Defendants' security personnel to view the recordings of Plaintiff and the Class
3 Members.

4 118. Defendants further intentionally intruded on Plaintiff and the Class Members' privacy by
5 disclosing certain recordings of Plaintiff and the Class Members to third parties during the course of an
6 internal investigation.

7 119. In acting as alleged above, Defendants' violated Plaintiff and the Class Members' privacy
8 rights under Article I, section 1 of the California Constitution.

9 120. In acting as alleged above, Defendants' conduct was outrageous and motivated by a
10 commercial interest in disregard of Plaintiff and the Class Members' privacy rights.

11 121. Defendants' intrusion into Plaintiff and the Class Members' privacy would be highly
12 offensive to a reasonable person.

13 122. Plaintiff and the Class Members suffered harm, including, but not limited to, suffering,
14 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame,
15 mortification, hurt feelings, disappointment, depression and feelings of powerlessness.

16 123. Defendants' conduct was a substantial factor in causing Plaintiff and the Class Members'
17 harm.

18 124. Plaintiff and the Class Members are informed and believe that Defendants' conduct is
19 ongoing and will cause irreparable harm if an injunction does not issue, and therefore seek injunctive
20 relief.

21 **NINTH CAUSE OF ACTION**

22 **Distribution of Private Sexually Explicit Materials – Civil Code section 1708.85**

23 **Against All Defendants and on Behalf of Plaintiff and the Class Members**

24 125. Plaintiff and the Class Members incorporate by reference and re-allege as if fully stated
25 herein the material allegations set out in the preceding paragraphs.

26 126. Plaintiff and the Class Members underwent medical procedures on their reproductive
27 organs. During those procedures, Plaintiff and the Class Members' intimate body parts were exposed and
28 visible.

1 127. Plaintiff and the Class Members had a reasonable expectation of privacy in the operating
2 rooms of Sharp Grossmont Hospital's Women's Center.

3 128. Plaintiff and the Class Members also had a reasonable expectation of privacy that their
4 communications with medical personnel and their medical procedures were private and would remain
5 private.

6 129. Defendants knew or should have known of Plaintiff and the Class Members' privacy
7 expectations.

8 130. Defendants intentionally intruded on Plaintiff and the Class Members' privacy by
9 recording Plaintiff and the Class Members while they were in the operating rooms of SGH's Women
10 Center.

11 131. Defendants intentionally distributed the secret video recordings of Plaintiff and the Class
12 Members to third parties, including Defendants' non-medical employees, security guards, and attorneys
13 for review.

14 132. Defendants also intentionally distributed the secret video recordings of Plaintiff and the
15 Class Members to third parties during the course of an internal investigation.

16 133. Plaintiff and the Class Members are informed and believe that many of these secret
17 recordings show Plaintiff and the Class Members' intimate body parts.

18 134. Plaintiff and the Class Members did not consent to Defendants' distribution of these video
19 recordings.

20 135. In acting as alleged above, Defendants violated Plaintiff and the Class Members' privacy
21 rights and unlawfully distributed Plaintiff and the Class Members' private sexually explicit materials in
22 violation of Civil Code section 1708.85.

23 136. Plaintiff and the Class Members suffered harm, including, but not limited to, suffering,
24 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame,
25 mortification, hurt feelings, disappointment, depression and feelings of powerlessness.

26 137. Defendants' conduct was a substantial factor in causing Plaintiff and the Class Members'
27 harm.

28 138. Plaintiff and the Class Members are informed and believe that Defendants' conduct is

1 ongoing and will cause irreparable harm if an injunction does not issue, and therefore seek injunctive
2 relief.

3 **PRAYER FOR RELIEF**

4 Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment
5 against Defendants, jointly and severally as follows:

- 6 1. That this action be certified as a class action;
- 7 2. For general damages according to proof;
- 8 3. For special damages according to proof;
- 9 4. For nominal damages according to proof;
- 10 5. For treble damages according to proof;
- 11 6. For statutory penalties according to proof;
- 12 7. For punitive damages according to proof;
- 13 8. For statutory attorneys' fees according to proof;
- 14 9. For reasonable attorneys' fees;
- 15 10. For the costs of the litigation;
- 16 11. For an injunction ordering Defendants to cease and desist from the unlawful conduct
17 described herein;
- 18 12. And for such other and further relief as is just and proper.

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20 Dated: May 23, 2016

PATTERSON LAW GROUP

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23 By: Allison H. Goddard
24 Allison H. Goddard

25 Attorneys for Plaintiff MELISSA ESCALERA
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